

Introduced by Senator McClintock

December 4, 2006

Senate Constitutional Amendment No. 1—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 19 of Article I thereof, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

SCA 1, as introduced, McClintock. Eminent domain: condemnation proceedings.

The California Constitution authorizes governmental entities to take or damage private property for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner of the property. It also authorizes the Legislature to provide for possession by the condemnor following commencement of the eminent domain proceedings upon deposit in court, and prompt release to the owner of the property, of the money determined by the court to be the probable amount of just compensation.

This measure would further provide that private property may be taken or damaged only for a stated public use, and not without the consent of the owner for purposes of economic development, increasing tax revenue, or any other private use, nor for maintaining the present use by a different owner. The measure would also require that property acquired in eminent domain be owned and occupied by the condemnor, except as specified, and be used only for the public use stated at the time of the taking.

This measure would also provide that if the property ceases to be used for the stated public use, the former owner would have the right to reacquire the property for its fair market value. This measure would

further require a county assessor, upon property being so reacquired, to appraise that property for purposes of property taxation at its adjusted base year value as had been last determined at the time the property was acquired by the condemnor.

This measure would define “just compensation” for purposes of condemnation and specify the scope of review in an action challenging the validity of a taking.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

1 WHEREAS, This measure shall be known and may be cited as
2 “The Homeowners and Private Property Protection Act of 2007”;
3 and
4 WHEREAS, The Legislature finds and declares all of the
5 following:
6 (a) Our California Constitution provides that all people have
7 inalienable rights, including the acquisition, possession, and
8 protection of property, and that no person shall be deprived of
9 property without due process of law.
10 (b) Our California Constitution further provides that private
11 property may not be taken or damaged by government except for
12 public use and only after just compensation has been paid to the
13 property owner.
14 (c) Notwithstanding these clear constitutional guarantees, state
15 and federal courts have not protected these rights from
16 encroachment by state and local government through the exercise
17 of their powers to take private property for the use or gain of
18 another private owner or owners.
19 (d) The decision of the United States Supreme Court (*Kelo v.*
20 *City of New London*) on June 23, 2005, permitted a city to exercise
21 its power of eminent domain to take private property for the
22 purpose of transferring ownership to a private developer, which
23 means that Californians no longer have any federal protection
24 against their property being taken for the private gain of others.
25 (e) Furthermore, the judicial processes available to an owner of
26 property to obtain just compensation when property is taken for a
27 legitimate public use are burdensome, costly, and unfair; and
28 WHEREAS, The Legislature further finds and declares all of
29 the following:

1 (a) State and local government shall be limited to using the
2 power to take private property only for public uses, such as roads,
3 schools, parks, and public facilities. Private property must not be
4 taken from one owner and given to another private owner for any
5 reason, unless the original owner is a willing seller.

6 (b) When state or local government takes private property for
7 public purposes, the owner shall receive just compensation for
8 what has been taken or damaged. If the owner and the government
9 are unable to agree to a fair price, the owner shall be entitled to a
10 fair and efficient judicial process to determine the appropriate
11 amount for the government to pay as determined by a jury; now,
12 therefore, be it

13 *Resolved, by the Senate, the Assembly concurring,* That the
14 Legislature of the State of California at its 2007–08 Regular
15 Session commencing on the fourth day of December 2006,
16 two-thirds of the membership of each house concurring, hereby
17 proposes to the people of the State of California that the
18 Constitution of the State be amended as follows:

19 First—That Section 19 of Article I thereof is amended to read:

20 SEC. 19. (a) Private property may be taken or damaged *only*
21 for a *stated* public use *and* only when just compensation,
22 ascertained by a jury unless waived, has first been paid to, or into
23 court for, the owner. *Private property shall not be taken or*
24 *damaged without the consent of the owner for purposes of*
25 *economic development, increasing tax revenue, or any other private*
26 *use, nor for maintaining the present use following the taking.* The
27 Legislature may provide for possession by the condemnor
28 following commencement of eminent domain proceedings upon
29 deposit in court and prompt release to the owner of money
30 determined by the court to be the probable amount of just
31 compensation.

32 (1) *“Just compensation” includes, but is not limited to: the cost*
33 *of acquiring comparable property; all costs and losses incurred*
34 *due to the condemnation, including, but not limited to, loss of*
35 *income, loss of business good will, and relocation costs; and*
36 *attorney’s fees upon determination that the amount offered by the*
37 *public agency was less than the amount ascertained by the jury,*
38 *or by the court if a jury is waived.*

1 (2) *The owner's acceptance of money deposited in court as the*
2 *probable amount of just compensation shall not prejudice the*
3 *owner's right to challenge the amount of compensation.*

4 (b) *Property taken by eminent domain shall be owned and*
5 *occupied by the condemnor, or by another governmental agency*
6 *by agreement with the condemnor, or may be leased to entities*
7 *that are regulated by the Public Utilities Commission. All property*
8 *that is taken by eminent domain shall be used only for the public*
9 *use stated at the time of the taking, except for purposes, public or*
10 *private, that are incidental to that use.*

11 (c) *When property taken by eminent domain ceases to be used*
12 *for the public use stated at the time of the taking, or fails to be put*
13 *to that use within 10 years following the date of that taking, the*
14 *former owner shall have the right to acquire the property at fair*
15 *market value. Notwithstanding subdivision (a) of Section 2 of*
16 *Article XIII A, upon reacquisition the property shall be appraised*
17 *by the assessor for purposes of property taxation at its base year*
18 *value, with any authorized adjustments, as had been last*
19 *determined in accordance with Article XIII A at the time the*
20 *property was acquired by the condemnor.*

21 (d) *In any action by a property owner or lessee challenging the*
22 *validity of a taking under this section, the property owner or lessee*
23 *shall not be limited to review of the administrative record and the*
24 *court shall not accord deference to any legislative finding or*
25 *declaration made in this respect by the condemnor. The property*
26 *owner or lessee shall be entitled to an award of attorney's fees*
27 *from the condemnor if the court finds that the condemnor's actions*
28 *are not in compliance with this section.*

29 (e) *This section does not apply to asset forfeiture upon*
30 *conviction of a crime in a manner prescribed by law.*

31 Second—Section 19 of Article I, as amended herein, is
32 self-executing and shall apply to all condemnation actions
33 commenced or pending on or after June 23, 2005, but shall not
34 apply to an action that was completed and is not appealable after
35 that date. The Legislature may adopt laws to further the purposes
36 of Section 19 and aid in its implementation. No amendment to
37 Section 19 otherwise may be made except by a vote of the people
38 pursuant to Article II or Article XVIII of the California
39 Constitution.

1 Third—The provisions of Section 19 of Article I are severable.
2 If any provision of Section 19 of Article I or its application is held
3 invalid, that invalidity shall not affect other provisions or
4 applications that can be given effect without the invalid provision
5 or application.

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